

Internal Revenue Service

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Person To Contact:

, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-138189-11

February 10, 2012

LEGEND

X =

D =

State =

Dear :

This is in response to a letter dated September 13, 2011, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(c) to be treated as a corporation for federal tax purposes.

FACTS

According to the information submitted, X was formed on D as a limited liability company under the laws of State. The parties conducted a transaction that included a stock purchase. The parties intended that the stock purchase constitute a qualified stock purchase (QSP) within the meaning of § 338(d)(3). To achieve this intended result, it was necessary that X be classified as a corporation for federal tax purposes. However, the Form 8832, Entity Classification Election, was not timely filed with the appropriate service center.

LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. An eligible entity with a single owner can elect to be classified as an association taxable as a corporation or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b) provides a default classification for an eligible entity that does not make an election. Under § 301.7701-3(b)(1)(i), a domestic eligible entity that does not otherwise elect will be considered as a disregarded entity if it has a single owner.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the service center designated on the form. Section 301.7701-3(c)(1)(iii) provides that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed, if no such date is specified on the election form. The effective date specified on Form 8832 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad) under all subtitles of the Code except subtitles E, G, H and I.

Section 301.9100-1(b) defines the term “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or an announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X has satisfied the requirements of § 301.9100-3. As a result, X is granted an extension of time of 120 days from the date of this letter to file a properly executed Form 8832 with

the appropriate service center, electing to be treated as an association taxable as a corporation for federal tax purposes effective D. A copy of this letter should be attached to the election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed as to whether the stock purchase is a QSP within the meaning of § 338(d)(3).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Joy C. Spies

Joy C. Spies

Acting Senior Technician Reviewer

Branch 1

Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes